IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4337 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRAPRASAD SHANKARLAL PUROHIT

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 4337 of 2001

MR BS SUPEHIA for Petitioner No. 1

MR DABHI, AGP, for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/09/2004

ORAL JUDGEMENT

This Court has decided the present petition on 20th February, 2002. This Court set aside the award while allowing the petition made by the Labour Court concerned in Reference No.171 of 1996 dated 29th May, 2000. This Court directed the respondent to reinstate

the petitioner with continuity of service with 50% of back wages for the intervening period from the date of termination till the date of actual reinstatement. The respondent was further directed to reinstate the petitioner in service with continuity of service within two months from the date of receipt of copy of this order and to pay the back wages to the petitioner for the intervening period at the rate of 50% within 3 months from the date of receipt of the order. Accordingly, the reference was allowed.

2 This decision was challenged by the respondent in Letters Patent Appeal No.1067 of 2002. The Division Bench has decided the Letters Patent Appeal on 7th October, 2003. The Division Bench has confirmed the order passed by this Court in respect of granting 50% of back wages for the intervening period. The relevant observations made by the Division Bench while partly allowing the appeal in paragraphs nos.3 and 4 are quoted as under:-

"3. However, there is a lot of force in the last submission made by Shri Sood for the appellant that while allowing the writ petition filed by the respondent workman, the learned Single Judge has not considered the submission raised by the appellant-State of Gujarat before him that the project on which the respondent-workman serving had already come to an end and there was no work which can now be offered to the workman. Therefore, he could not have been reinstated in service. Shri Supehia for the respondent workman frankly conceded that the learned Judge has no where considered this submission in his entire judgement while allowing the writ petition. However, Shri Supehia submitted that the learned Assistant Govt. Pleader Shri Dave, who appeared before the learned Single Judge after raising the aforesaid contention did not seriously press that contention into service. Perhaps because of that the learned Single Judge might not have dealt with the same in his order. Be that as it may, the fact remains that the contention was raised before the learned Single Judge. Therefore, it would have been better if the said contention was dealt with and answered by the learned Single Judge in his order.

4. In view of the above discussion, we are

> of the considered opinion that only on this limited point this appeal is required to be allowed. Accordingly, the matter is remanded to the learned Single Judge with a request that the aforesaid contention regarding the project coming to an end during the pendency of the Reference be considered and decided as early as possible, preferably within one month from today. The Letters Patent Appeal is allowed to the aforesaid extent and main, Special Civil Application is remanded to the learned Single Judge only on this point. No order as to costs."

The appellate Court remanded matter back to this Court that the aforesaid contention regarding project coming to an end during the pendency of reference be considered and decided as early as possible.

3 Now in light of these facts this Court has to examine the question that during the pendency of Reference the project was closed and in light of that fact whether reinstatement can be granted or not. For this limited purpose, the matter has been remanded back to this Court.

4 Certain events and dates are not in dispute between the parties and they have been taken from record. On 14th March, 1989 the petitioner was appointed by the respondent. On 31st March, 1990 his service was terminated; on 24th September, 1990 the dispute was referred for adjudication and on 19th June, 1996 the project in question was closed. The finding given by this Court in earlier decision dated 20th February, 2002 about completion of 240 days and non-compliance of Section 25F are not disturbed by the appellate Court. Therefore, the petitioner had completed 240 days of continuous service and Section 25F of the Industrial Disputes Act was not complied with by the respondent. Therefore, the termination order is ab initio void. In such circumstances, the workman is deemed to be in service for all purposes. This legal fiction has been examined by the Apex Court in the case of Mohan Lal v/s Management of M/s Bharat Electronics reported in AIR 1981 SC 1253. In such circumstances, mere declaration is enough that order of termination is ab initio void because of non-compliance of Section 25F of the Industrial Disputes Act, 1947.

5 The question is during the pendency of the Reference, the project was over and it was closed on 19th

June, 1996. In the workman's evidence before the Labour Court vide exh.16 it was not admitted that he was employed in a particular project. Looking to the oral evidence of the respondent, no written appointment order was issued in favour of the petitioner. The Labour Court in its judgement and award in paragraph 5, has specifically observed, "no written appointment order was issued in favour of Rajendra Prasad and he was engaged by oral order." It is therefore apparent that the workman was not appointed by a written order in the project in question and his service was terminated on 31st March, 1990 when the project continued, which was subsequently closed on 19th June, 1996. The Government Resolution dated 19th June, 1996 in paragraph no.12 provided that the employees those who are working in various offices of the project are to be absorbed against the vacant posts in a different project or offices.

6 The learned AGP, Mr Dabhi, submitted that during the pendency of the reference when the project is closed, it is very difficult for the respondent to reinstate the workman in his original post. He also submitted that there is no work available because the project in question is closed. He relied upon the following decisions

(1) Executive Engineer (State of Karnataka) v. K. Somisetty. AIR 1997 SC 2663

(2) U.P. Land Development Corporation v. Amar Singh (2003) 5 SCC 388

(3) State of Himachal Pradesh v. Nodha Ram, JT 1996 (1) SC 2202

(4) State of Himachal Pradesh v. Suresh Kumar Verma, (1996) 7 SCC 562

(5) Adikanda Sethi v. Palani Swami Saran Transports, (1997) 5 SCC 434

Relying upon the aforesaid decisions he submitted that no reinstatement in such circumstances can be granted in favour of the petitioner.

7 The learned advocate Mr Supehia for the petitioner submitted that the termination itself is violative of Section 25F of the Industrial Disputes Act and no written order is issued in favour of the

petitioner that he was appointed in a particular project. On the contrary, the witness of the Respondent admits that the petitioner was engaged by them. He, therefore, submitted that once the order of termination is set aside, natural and normal relief must have to be granted in favour of the petitioner. There is no justification or inability pointed out by the respondent that they are not able to absorb or engage the present petitioner in any other project or office of the State Government. Therefore, his submission is that once the termination order is declared as ab initio void by this Court, reinstatement must be granted. Mr Supehia has relied upon the decision of this Court in GRAM PANCHAYAT, DAMNAGAR V. SHARADKUMAR D. ACHARYA reported in 1994 (1) GLR 579. Relying upon this decision he submitted that even though the post in question is abolished and there is financial difficulty the order of reinstatement must have to be complied with by the concerned authority.

8 I have considered the submissions made by both the learned advocates in respect of these limited aspects for which the appellate court has referred this matter or remanded this matter to this Court. Considering this aspect only, it is necessary to note that no written order was issued in favour of the petitioner. This is not disputed fact. There is no documentary evidence produced by the respondent to establish that the petitioner was appointed in a particular project except the oral evidence of the witness of the respondent. But, that fact was not admitted by the petitioner. It is also not in dispute that when the termination order was passed this alleged project was in existence and was not closed. When the termination order was passed without closing down the project itself cannot become defence for the respondents for not reinstating the workman. The paragraph 12 of the Government Resolution dated 19th June, 1996 provides alternative jobs in their department / office for the employees who were working in a particular project. Had his service is not illegally terminated, he must have worked with the respondent up to 19th June, 1996 and similar relief could have been granted in favour of workmen and he must have been accommodated by the respondents along with other employees who were absorbed in their department/office/projects.

9 Recently, the Apex Court has considered a case of project employee in the case of S.M. NILAJKAR V. TELECOM DISTRICT MANAGER, KARNATAKA reported in AIR 2003 SC 3553. In para 11 of the said decision the following observations are made:-

"11. It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects."

The Apex Court further observed that appointment on project require written order and it is also required to be mentioned that he was being engaged in a scheme or project which was to last only for a particular period otherwise, the workman may not face abrupt termination. The relevant paragraph 14 is quoted as under:-

"14. The engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to the occurrence of some event and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end."

10. Considering the aforesaid observations in the above referred two paragraphs, the facts of this case are also identical because in the above referred case the employees were working in a project but no written order was issued in their favour. Ultimately, they challenged the termination order before the Labour Court and thereafter the Single Judge of the High Court of Karnataka directed the reinstatement with benefit of continuity of service and consequential benefits. Ultimately, the Division Bench held that the workmen were employed under the project of the Telecom Department and were, therefore, covered under by sub-clause (bb) of clause (oo) of Section 2 of the Industrial Disputes Act, 1947.

11 Finally the Apex Court has allowed the appeal and

set aside the decision of the employer and decision of the Single Judge has been restored wherein the direction of reinstatement has been granted by the learned Single Judge. Therefore, considering the entire facts on record, the termination is not as a result of closing down of the project, the project was closed on 19th June, 1996, the termination of the petitioner was made on 31.3.1990 and looking to the Government Resolution dated 19th June, 1996 if the services of the workman was not terminated arbitrarily on 31st March, 1990 he should have remained in service and continued up to 19th June, 1996 and naturally would have got the benefit of clause 12 of the Government Circular dated 19th June, 1996. Therefore, considering all the facts and circumstances, according to my opinion, the submission made by learned AGP Mr Dabhi cannot be accepted and the decisions which are relied upon by him are not applicable to the facts of the present case and considering the legal fiction that once the termination order is found to be ab initio void then the workman is entitled to all the reliefs and he deemed to be in service for all purposes.

The petitioner RAJENDRAPRASAD SHANKARLAL PUROHIT had filed further affidavit in reply in Civil Application No. 6666 of 2002 in Letters Patent Appeal No. 1067 of 2002 dated February, 2003. In the said affidavit in reply, it was averred by the petitioner that the services of one Shri Mayank Ramanlal Joshi who was working as a Daily Wager Tracer under the Deputy Executive Engineer, Rural Road Project in 1989-90 (same Project) were terminated on 13th March, 1999. He had filed Reference NO. 426 of 1993 against the termination of his services before the Labour Court, Kalol. The Labour Court, Kalol made award on 12th April, 1999 and granted reinstatement with continuity of service and directed to pay back wages from 11th January, 1990 to 4th September, 1990 to the Deputy Executive Engineer Rural Road Project Kalol (Same Project). Said award was challenged by the State of Gujarat by filing special civil application no. 473 of 2000 which came to be summarily dismissed by this Court by order dated 31st January, 2000 and the Letters Patent Appeal No. 147 of 2000 filed by the State of Gujarat against that order was also dismissed by the Division Bench of this Court on 8.5.2000. Thereafter, by order dated 7th July, 2000 passed by the R & B Department, Government of Gujarat, reinstatement was granted in favour of the said workman Mayankkumar Joshi and today, said Shri Mayankkumar Joshi is working in the R. & B. Department. Said Mayankkumar Joshi was working in the same project of Rural Road Project and his services were terminated and thereafter, he was taken back in service

in view of the award made by the labour court. These facts have again been narrated by the petitioner in the further affidavit in rejoinder before this Court after the remand order passed by the Division Bench of this Court on 26th December, 2003. Copy of the said affidavit in rejoinder was supplied to the respondents on 19th January, 2004. However, the respondents have not filed any counter to the said affidavit in rejoinder filed by the petitioner. The respondents have not denied the averments made in the said affidavit in rejoinder. Therefore, the averments made by the petitioner in the said affidavit in rejoinder have remained unchallenged, and uncontroverted. Therefore, considering those uncontroverted averments made by the petitioner in his further affidavit in rejoinder after the matter was remanded back to this Court, this court has taken into account those averments while considering the case of the present petitioner for the relief of reinstatement. When Mayank R. Joshi who was working in the same project, whose services were terminated in the year 1990 and subsequently reinstated in service on 7.7.2000 in view of the award made by the labour court, Kalol though the project in which the said workman Mayankkumar was working was closed since 19th June, 1996, the respondents cannot raise the contention that since the project in which the present petitioner was working has been closed and, therefore, the petitioner cannot be reinstated in service. Considering the reinstatement of that workman Mayankkumar R.Joshi in the year 2000 after the alleged closure of the said project in the year 1996, that contention of the respondent cannot be accepted and, therefore, same is rejected. Therefore, according to my opinion, once, the order of termination is found to be void ab-initio, the petitioner is entitled for the relief of reinstatement in service because the petitioner was not appointed for that project alone. No appointment order was issued in favour of the petitioner. No condition was communicated to the petitioner that his tenure of appointment is limited to the project remaining in existence. In absence of all this material, the petitioner cannot be considered to be the project employee. Therefore, the petitioner is entitled for the relief of reinstatement with continuity of service. It is also necessary to be noted that if the petitioner was considered to be the project employee, then, why his services were terminated on 31st March, 1990 when the project was in existence ? There was no justification for the respondents to terminate the service of the petitioner in the midst of the project. This conduct on the part of the respondents proves that the petitioner was not working as a project employee. Therefore, the

petitioner is not connected with the project. Therefore, his case is required to be considered independently. Accordingly, the petitioner is entitled for the relief of reinstatement.

12 In the result, the present Special Civil Application is allowed. The respondent is directed to reinstate the petitioner-workman in service with continuity of service with 50% of back wages of the interim period, as directed earlier, and as confirmed by the appellate court and implement the decision within a period of two months.

(H.K. Rathod, J.)
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